IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

WP(C).No. 25050 of 2006(F)

PETITIONER:

DEVAKI AMMA,
KUNIYIL HOUSE, KADIYANGAD P.O.,
PERAMBRA (VIA), KOZHIKODE DISTRICT.

BY ADV. SRI.P.K.SURESH KUMAR,
SRI.K.P.SUDHEER.

RESPONDENTS:
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1. **THE STATE OF KERALA,**
   REPRESENTED BY ITS PRINCIPAL SECRETARY,
   DEPARTMENT OF PUBLIC ADMINISTRATION (FEPB),
   THIRUVANANTHAPURAM.

2. **THE DISTRICT COLLECTOR,**
   KOZHIKODE.

BY GOVERNMENT PLEADER SRI. BENJAMIN PAUL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.25050/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PROCEEDING OF THE R.2. DT. 24/11/1971.

EXT.P.2: COPY OF THE FIRST APPLICATION DT. 19/06/2002 SUBMITTED BY THE PETITIONER BEFORE THE R.2.

EXT.P.3: COPY OF THE ORDER DTD. 10/04/2006 ISSUED BY THE R.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

ANTONY DOMINIC, J.

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W.P.(C) No. 25050 OF 2006 F
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Dated this the 19th September, 2007

J U D G M E N T

Petitioner's husband was a freedom fighter who was granted pension in terms of the Central Government's Freedom Fighters' Pension Scheme and State Freedom Fighters' Pension Scheme. He was also employed as a Police Constable. On his retirement, apart from the aforesaid two pensions he was getting pension for the service he has rendered in the State Police Department. On his death on 3-5-2002, the petitioner was declined pension under the State Scheme. The reason thereof stated in Ext. P3 is that since she was receiving family pension of her deceased husband in terms of the Service Rules she is not eligible for the pension under the Freedom Fighters' Pension Scheme. It is under these circumstances the petitioner has filed this writ petition praying for direction to the respondents to continue payment of the freedom fighters' pension that was being paid to her husband till his death along with arrears and interest thereon.

2. The only objection that is raised by the respondents is that since the petitioner is in receipt of family pension in terms of the Service Rules for the service rendered by her husband in the Police Department she had rendered herself ineligible for the State freedom fighters pension. In support of this contention, what is relied on is Rule 10 of the Kerala Freedom Fighters' Pension Rules, 1971. This rule provides that the widow/minor sons/unmarried daughters "who have not otherwise become independent of a Freedom Fighter" who has been sanctioned pension under rule 6 shall be eligible to the continuance of the pension. This rule will render a widow ineligible for pension if she had become independent of the freedom fighter.

3. The rule does not indicate the manner of independence that will render a widow ineligible for continued payment of pension. If it is financial independence, as contended by the learned Govt. Pleader, then in this case, apart from pensionary benefits, there is no other income for the widow and therefore, she cannot be said to have achieved independence. In this case, respondents also have no

case that the petitioner had become independent of her husband, the freedom fighter. However, they contend that on his death the petitioner is receiving family pension that was due on account of the service rendered by the freedom fighter in the Police Department. This does not amount to a case where the petitioner had become independent of the deceased to render herself ineligible for continuance of the pension as contemplated under Rule 10 of the Rules.

4. Therefore, the stand taken by the respondents in Ext. P3 is not correct and I quash Ext. P3. The respondents are directed to pay pension under the Kerala Freedom Fighters' Pension Rules, 1971 to the petitioner along with the arrears thereon. The payment shall be made as expeditiously as possible, at any rate within a period of three months from the date of receipt of a copy of this judgment.

ANTONY DOMINIC
JUDGE

jan/-